DEPARMENT OF ENERGY – DEPARTMENT OF FINANCE
JOINT CIRCULAR NO. 1, SERIES OF 2020

THE IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 11371, "AN ACT REDUCING ELECTRICITY RATES BY ALLOCATING A PORTION OF THE NET NATIONAL GOVERNMENT SHARE FROM THE MALAMPAYA NATURAL GAS PROJECT FOR THE PAYMENT OF THE STRANDED CONTRACT COSTS AND STRANDED DEBTS" OTHERWISE KNOWN AS THE "MURANG KURYENTE ACT"

WHEREAS, Republic Act (RA) No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001" (EPIRA), declares the policy of the State to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

WHEREAS, the EPIRA mandates the Power Sector Assets and Liabilities Management Corporation (PSALM) to manage the orderly sale, disposition, and privatization of National Power Corporation (NPC) generation assets, real estate and other disposable assets, and Independent Power Producer (IPP) contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner;

WHEREAS, Murang Kuryente Act (hereinafter referred to as the "Act") declares as policy of the State to protect the public interest by ensuring the provision of reliable, secure, and affordable supply of electric power to consumers. Towards this end, the State shall implement policies and programs to ensure transparent and reasonable prices of electricity to consumers by minimizing the universal charges for stranded contract costs and stranded debts;

WHEREAS, pursuant to Section 7 of the Act, the Department of Energy (DOE) and the Department of Finance (DOF), in consultation with the Department of Budget and Management (DBM), the Bureau of the Treasury (BTr) and the PSALM, shall promulgate the Implementing Rules and Regulations (IRR) for the proper disposition of the funds and the effective implementation of the Act;

WHEREAS, the DOE and the DOF, in consultation with relevant government agencies, drafted the IRR and subjected the same to public consultation on 22 November 2019 at Taguig City;

NOW THEREFORE, after due consideration of the comments received during the public consultation and submitted by interested parties, jointly, the DOE and the DOF hereby adopt and promulgate the following rules and regulations to implement the provisions of the Act:

SECTION 1. TITLE

This rules and regulations shall be referred to as the "Implementing Rules and Regulations of RA No. 11371".

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SECTION 2. GENERAL PRINCIPLES

Pursuant to Section 4 of the Act, the amount of Two Hundred Eight Billion Pesos (PhP208,000,000,000.00) of the proceeds of the net National Government share from the Malampaya fund shall be utilized for the payment of stranded contract costs and stranded debts transferred to and assumed by the PSALM pursuant to Section 49 of the EPIRA. In this regard, the following principles shall be applied:

2.1 The annual allocation from the Malampaya fund shall be used exclusively for the payment of stranded contract costs and stranded debts of PSALM, including all anticipated shortfalls in the course of payment of such liabilities, duly verified and confirmed by the PSALM Board;

2.2 The recovery by PSALM of the stranded contract costs, stranded debts and anticipated shortfalls shall consider the application of proceeds from the privatization of NPC generating assets, NPC-IPP contracts and other disposable assets transferred to PSALM, and net cash flows from the operation of said existing assets including the collection of outstanding receivables relative to asset privatization and plant operations;

2.3 The annual allocation from the Malampaya fund shall be included in the General Appropriations Act (GAA) to be allocated to the PSALM budget consistent with the fiscal program of the government;

2.4 Upon the effectivity of this IRR, no new universal charges (UC) for stranded contract costs and stranded debts shall be collected; Provided, that, upon exhaustion of the PhP208 Billion allocated amount under the Act and no additional allocations are made by Congress, PSALM may again file petitions applying for UC stranded contract costs and stranded debts with the Energy Regulatory Commission (ERC), following such rules and regulations as may be applicable;

2.5 In the event the stranded contract costs, stranded debts, and anticipated shortfalls in the course of the payment of such liabilities are fully paid before the exhaustion of the amount allocated in the Act, the remainder of the amount allocated shall be utilized pursuant to Presidential Decree (PD) No. 910, entitled *Creating an Energy Development Board, Defining Its Powers and Functions, Providing Funds Therefor, and For Other Purposes*; and

2.6 Any remaining and future balance in the Malampaya fund over and above the amount indicated in the Act shall remain in the Special Account in the general fund, and the application of the Act shall not impair in any way the use of the Malampaya fund for energy resource development and exploitation programs pursuant to PD No. 910.

SECTION 3. PURPOSE

This IRR shall prescribe the procedures for:

3.1 Determining the annual amount of stranded contract costs, stranded debts, and anticipated shortfalls to be paid utilizing the allocation from the Malampaya fund;

3.2 Allocating amounts from the Malampaya fund on an annual basis for the payment of stranded contract costs, stranded debts and anticipated shortfalls, which shall be included in the GAA consistent with the fiscal program of the government;

3.3 Timely release by the DBM to the PSALM of the annual amounts appropriated for the stranded debts, stranded contract costs payment schedules and the projected quarterly anticipated shortfalls, as duly verified and confirmed by the PSALM Board;

3.4 Proper utilization and accounting by the PSALM of the allocations from the Malampaya fund appropriated for the aforesaid purposes; and

3.5 Delineation of responsibilities of concerned government agencies in the determination, allocation, release and utilization of the allocation from the Malampaya fund.

SECTION 4. DEFINITION OF TERMS

For the purposes of this IRR, the following terms and phrases are defined as follows:

4.1 **Act** refers to RA No. 11371, otherwise known as the "*Murang Kuryente Act*".

4.2 **Anticipated shortfall** shall mean portion of the projected cash flow deficit of the PSALM corresponding to the stranded contract costs and stranded debts as defined under the Act for a budget year. The anticipated shortfall shall be calculated by the PSALM subject to verification and confirmation by its Board.

4.3 **Energy Regulatory Commission (ERC)** refers to the regulatory agency created by Section 38 of the EPIRA.

4.4 **Independent Power Producer Contracts of the National Power Corporation or IPP Contracts** refer to generation capacities developed under the Build-Operate-Transfer (BOT) scheme pursuant to RA No. 6957, as amended by RA No. 7718, otherwise known as the *BOT Law* and its IRR, and any such generation asset whose construction was not financed by the NPC but whose output is bought by the NPC under Power Purchase Agreements (PPAs), Energy Conversion Agreements (ECAs) or any other similar contractual relationship. These IPP contracts were transferred to and assumed by the PSALM pursuant to the EPIRA.

4.5 **Joint Congressional Energy Commission (JCEC)**, formerly known as the Joint Congressional Power Commission, refers to the congressional commission constituted under Section 62 of the *EPIRA,* as amended by RA No. 11285, otherwise known as the *Energy Efficiency and Conservation Act.*

4.6 **Malampaya fund** refers to the existing and future government share from the Net Production Proceeds of the Malampaya Natural Gas Project pursuant to PD No. 87, otherwise known as "*The Oil Exploration and Development Act of 1972"*, and Service Contract 38. This government share forms part of a Special Account in the general fund used to finance energy resource development and exploitation programs pursuant to PD No. 910. This is also known as the Net Government Share as mentioned in the Act.

4.7 **Murang Kuryente Special Account in the General Fund (MK-SAGF)** refers to the SAGF into which the annual allocation from the Two Hundred Eight Billion Pesos (PhP208,000,000,000.00) taken from the Malampaya fund that has been allocated specifically for this Act shall be transferred.

4.8 **National Power Corporation (NPC)** refers to the government-owned and/or -controlled corporation created under RA No. 6395, as amended.

4.9 **Power Sector Assets and Liabilities Management Corporation (PSALM)** refers to the government-owned and/or -controlled corporation created pursuant to Section 49 of the EPIRA, with the mandate of disposing and privatizing the assets of NPC and liquidating the outstanding financial obligations of NPC.

4.10 **Stranded contract costs** refers to the excess of the contracted cost of electricity under eligible IPP Contracts over the actual selling price of the contracted energy output of such contracts. Such IPP contracts shall have been approved by the Energy Regulatory Board (ERB) as of 31 December 2000.

4.11 **Stranded debts** refer to any unpaid financial obligations of the NPC transferred to and assumed by the PSALM which have not been liquidated by the proceeds from the sales and privatization of NPC assets.

4.12 **Universal Charge (UC)** refers to the charge imposed for the recovery of the stranded contract costs and stranded debts, and other purposes pursuant to Section 34 of the EPIRA, which shall be passed on and collected from all electricity end-users on a monthly basis by the distribution utilities and National Transmission Corporation or its concessionaire.

SECTION 5. PROCEDURES IN THE UTILIZATION OF THE MURANG KURYENTE SPECIAL ACCOUNT IN THE GENERAL FUND

5.1 Coverage

The MK-SAGF shall cover annually the stranded contract costs stranded debts and anticipated shortfalls not recovered by the PSALM through the UC up to the end of its corporate life, as verified and confirmed by its Board.

The UC for stranded contracts costs and stranded debts currently being collected and remitted to the PSALM may be covered by the allocated amount from the MK-SAGF subject to the fiscal program of the government.

5.2 Determination, Verification and Confirmation by the PSALM Board of the Total Amount of Stranded Contract Costs, Stranded Debts and Anticipated Shortfalls

5.2.1. In the first year of implementation of the Act, a projected cash flow statement of the stranded contract costs, stranded debts, including anticipated shortfalls for fiscal years (FY) 2020 to 2026, the complete list of all currently effective loan agreements and IPP contracts as of 31 December 2019 and all pending petitions on UC stranded contract costs and stranded debts filed before the ERC shall be submitted by the PSALM to DOF within fifteen (15) days from the effectivity of the IRR. For the succeeding years, the required documentations shall be submitted by the PSALM on or before 31 January of each year.

5.2.2 The PSALM shall take into account the following in its evaluation:

5.2.2.1 Performance of the IPP Administrators in optimizing the value of the privatized IPP contracts with the end view of minimizing the effective stranded contract costs and stranded debts;

5.2.2.2 Whether or not the PSALM has exercised best efforts in minimizing the effective stranded debts and shall verify the reasonableness and prudence of operating and investment costs;

5.2.2.3 Actual proceeds from the PSALM's privatization of the NPC generating assets, IPP contracts and other disposable assets;

5.2.2.4 Actual cash flows generated from the operation of remaining assets including collection of outstanding receivables; and

5.2.2.5 Any stranded debt and stranded contract cost (and its associated borrowing cost) that cannot be recovered from any ERC approved and pending petition of the PSALM.

5.3 The Board shall conduct an annual verification and confirmation of the actual amounts incurred by the PSALM for the payment of stranded contract costs and stranded debts with results to be submitted to the DOF, DOE, DBM and BTr, copy furnished the PSALM, within ninety (90) calendar days following the budget year.

5.4 **Inclusion in the General Appropriations Act.**

Pursuant to Section 4 of the Act, annual allocations from the Malampaya fund for the payment of stranded contract costs and stranded debts including anticipated shortfalls shall be included in the GAA consistent with the fiscal program of the government.

5.4.1 The PSALM shall include in its proposed annual budget the amount to be appropriated for the payment of stranded contract costs, stranded debts and anticipated shortfalls, as verified and confirmed by the Board;

5.4.2 Upon approval by the PSALM Board of the annual amount needed to cover the stranded contract costs and stranded debts, the PSALM shall submit to the DOF and DBM, not later than 31 January of each year, the said amount to be considered for appropriation under the proposed budget of the National Government;

5.4.3 The DBM shall include in the proposed annual National Expenditure Program (NEP) the amount as approved by the Development Budget Coordination Committee (DBCC) for payment of the stranded contract costs and stranded debts including anticipated shortfalls for the initial year and subsequent years, for submission to Congress.

5.4.5 The PSALM and the DBM shall ensure that the aggregate annual amounts that will be allocated for the payment of stranded contract costs, stranded debts including anticipated shortfalls from the Malampaya fund shall not exceed PhP208 Billion allowed under the Act.

5.5 **Annual Reconciliation and Reversion of Any Balance**

Any remaining balance after the reconciliation with the actual cash flows by the end of the life of the PSALM shall revert to the Special Account under the Malampaya fund to be utilized to finance energy resource development and exploitation programs pursuant to PD No. 910.

5.6 **Documentary Requirements from PSALM**

Documents required by concerned agencies from the PSALM, including the date of submission, are provided in Annex A.

SECTION 6. RESPONSIBILITIES AND FUNCTIONS OF AGENCIES

The responsibilities of the DOE, DOF, DBM, and PSALM shall be as follows:

6.1 **The DOE shall:**

6.1.1 Determine the annual collection and balance of the Malampaya fund, including the computation of the net National Government share;

6.1.2 Provide the DOF, BTr and DBM the status of the Malampaya fund, particularly the summary of Malampaya fund collections, as validated and certified by the BTr within thirty (30) days after the end of each quarter; and

6.1.3 Closely coordinate with the BTr for the status of the Malampaya fund.

6.2 **The DOF shall:**

6.2.1 Review the amount submitted by the PSALM to be programmed from the MK-SAGF, on the basis of calculated anticipated shortfalls for a specific budget year;

6.2.2 Consider the following factors, among others, in the review of the said annual program:

6.2.2.1 Fiscal Program of the National Government;

6.2.2.2 Historical rate of ERC approvals for every UC application of the PSALM, with such approvals taking into consideration the level of efficiencies, and costs/disbursements that are not recoverable through UC for stranded contract costs and stranded debts;

6.2.2.3 The PSALM's Corporate Operating Budget (COB) and cash flows that reflect prudent operating and capital expenditure levels and efficient and sound revenue generation policies and implementation; and

6.2.2.4 The PSALM's historical performance.

6.2.3 Submit the recommended annual program, chargeable against the MK-SAGF, to the DBCC through the DBM, on or before 30 April 2020 for budget year 2021, and 30 April of each year preceding the budget year, copy furnished the BTr.

6.3 **The DBM shall:**

6.3.1 Assess the impact of DOF's recommendation on the fiscal program of the National Government taking into consideration the available fiscal space of the National Government;

6.3.2 Present its assessment and the DOF's recommendation to the DBCC-Executive Technical Board (ETB) for deliberation and endorsement of the annual allocation to the DBCC Cabinet level;

6.3.3 Formally inform/notify the PSALM of the DBCC-approved amount, for inclusion in the annual NEP for programming and monitoring purposes, copy furnished the DOF and BTr; and

6.3.4 Ensure the timely release of the amounts appropriated in the annual GAA, subject to the submission by the PSALM of the Special Budget Request (SBR) and Monthly Disbursement Program (MDP);

6.3.4.1 Include in the annual NEP the approved amount to cover the payment of anticipated shortfalls under SAGF;

6.3.4.2 Issue a Fund Code under the Unified Accounts Code Structure (UACS) for the MK-SAGF. The same UACS Fund Code shall be used in all financial transactions related to the MK-SAGF by PSALM; and

6.3.4.3 Based on the submitted SBR and MDP of the PSALM, release the corresponding Special Allotment Release Order (SARO) and Notice of Cash Allocation (NCA) chargeable against the MK-SAGF directly to PSALM, in accordance with the allocation provided in the Act and consistent with the respective special provision of the GAA.

6.4 **The PSALM shall:**

6.4.1 Prepare and submit the required reports/documents to the DOF, DBM, BTr, and DOE within the deadlines in accordance with Section 5.6;

6.4.2 Submit requests to the DBM and BTr for issuance of fund code and opening of a Modified Disbursement System (MDS) sub-account, respectively, for the utilization of MK-SAGF;

6.4.3 Open an MDS sub-account with its servicing bank, copy furnished the DBM;

6.4.4 Coordinate regularly with the DOF, DOE, DBM and BTr to ensure consistent recordkeeping of disbursements from the MK-SAGF;

6.4.5 Submit quarterly reports to the DOF, DOE and DBM, on the actual utilization of the MK-SAGF released with breakdown of payments made for the debts and IPP contracts. The reports shall be submitted 30 days after the end of each quarter;

6.4.6 Submit, within thirty (30) days from the issuance of the Commission on Audit's annual audit report, the same to the DOE, DOF, DBM and BTr; and

6.4.7 Provide other reports that may be required by the DOF, DOE, DBM and BTr.

SECTION 7. REGULAR REPORTS TO ERC AND JCEC

7.1 Pursuant to Section 5 of the Act, PSALM shall regularly submit to the ERC and JCEC the following reports:

7.1.1 The appropriated amount from the MK-SAGF for the budget year, as approved by the DBCC, within thirty (30) days from the receipt of notification from the DBM, as provided in Section 6.5; and

7.1.2 The total amount utilized during the said budget year no later than ninety (90) days from the end of each budget year.

7.2 PSALM shall make the above reports available to the public through its website.

SECTION 8. CONGRESSIONAL OVERSIGHT

Pursuant to Section 6 of the Act, the JCEC shall exercise oversight powers over the implementation of the Act.

SECTION 9. NON-IMPOSITION OF NEW UNIVERSAL CHARGES FOR STRANDED CONTRACT COSTS AND STRANDED DEBTS

9.1. Pursuant to Section 7 of the Act, no new UC for stranded contract costs and stranded debts shall be collected upon the effectivity of this IRR.

9.2. The PSALM shall not file with the ERC any new petition for UC stranded contract costs and stranded debts until the PhP208 Billion allocated amount under this Act is exhausted and no other allocations are made by Congress.

SECTION 10. SEPARABILITY CLAUSE

If any provision of this IRR is declared unconstitutional or invalid, the other provisions not affected thereby shall remain valid and subsisting.

SECTION 11. EFFECTIVITY

This IRR shall take effect fifteen (15) days from the date of its publication in the Official Gazette or in a newspaper of general circulation. Copies thereof shall be filed with the University of the Philippines Law Center-Office of the National Administrative Register.

Approved, this _______ day of __________, 2020.

CARLOS G. DOMINGUEZ
Secretary
Department of Finance
FEB 26 2020

DEPARTMENT OF FINANCE
REPUBLIC OF THE PHILIPPINES
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